TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~140~~ 177.

THE INDIANA MANUFACTURING COMPANY, APPELLANT,

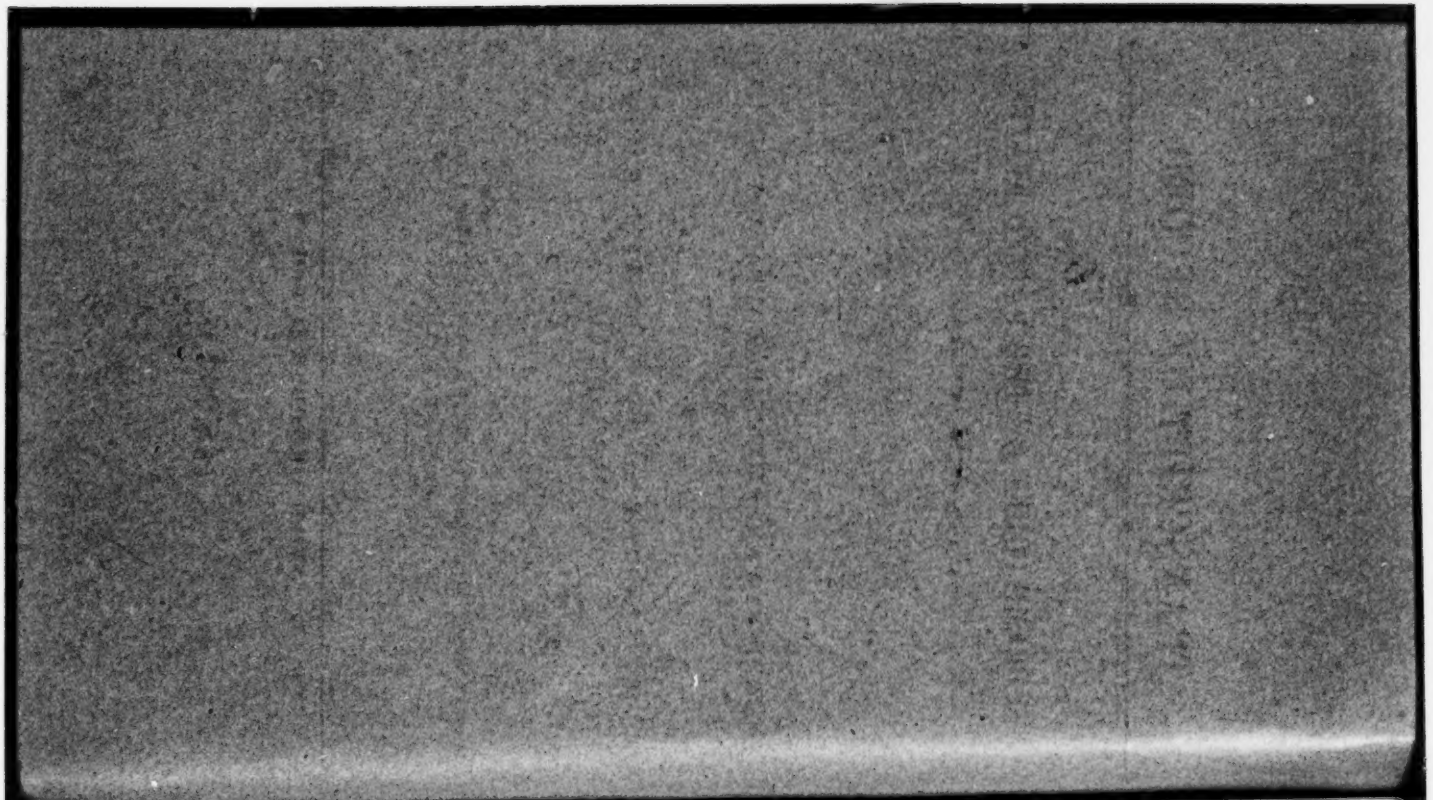
vs.

ARMIN C. KOEHNE, JOSEPH E. BOSWELL, HARRY B. SMITH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED OCTOBER 21, 1901.

(18,293.)



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 440.

THE INDIANA MANUFACTURING COMPANY, APPELLANT,

vs.

ARMIN C. KOEHNE, JOSEPH E. BOSWELL, HARRY B. SMITH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 1, 1901.

1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in the district of Indiana, on the first Tuesday of May, in the year of our Lord one thousand nine hundred and one, before Honorable John H. Baker, judge of the district court of the United States for the district of Indiana, and *ex officio* judge of said circuit court.

THE INDIANA MANUFACTURING COMPANY, Complainant, *vs.* ARMIN C. KOEHNE, JOSEPH E. BOSWELL, Harry B. Smith, Thomas Madden, William Pollard, Eugene Sauley, William H. Schmidt, Sterling R. Holt, Victor M. Backus, Joel A. Baker, Thomas Taggart, Hiram Miller, Albert Sahm, Sylvester Johnson, William A. Bell, Charles H. Stuckmeyer, George Wolf, James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, Thomas B. Buskirk, William D. Owen, Americus C. Daily, and Ivan N. Walker.	No. 9895.	Chancery.

Be it remembered that heretofore, to wit, at the May term of said court, on the 28th day of June, 1900, before Honorable John H. Baker, judge of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the complainant by Chester Bradford, Esq., its solicitor, and files its bill of complaint in the above-entitled cause, in the words following, to wit:

To the honorable judges of the circuit court of the United States for the district of Indiana:

Your orator, The Indiana Manufacturing Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Indiana, and having its principal office and place of business at the city of Indianapolis, in said State, brings this bill into this court against Armin C. Koehne, who is treasurer and a member of the board of review of Marion county, Indiana, residing at Indianapolis, in said county, individually and as such officer; Joseph E. Boswell, who is assessor, and a member of the board of review of Marion county, Indiana, residing in In-
2 dianapolis, in said county, individually and as such officer; Harry B. Smith, who is auditor, and a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county, individually and as such officer; Thomas Madden, who is a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county, individually and as such officer; William Pollard who is a member of the board of review of Marion

county, Indiana, residing in New Augusta in said county, individually and as such officer; Eugene Saulcy, who is assessor of Center township in Marion county, Indiana, and who resides in Indianapolis, in said county, individually and as such officer; William H. Schmidt, who was formerly treasurer and a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county; Sterling R. Holt, who was formerly treasurer and a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county; Victor M. Backus, who was formerly treasurer and a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county; Joel A. Baker, who was formerly assessor and a member of the board of review of Marion county, Indiana, residing in Indianapolis in said county; Thomas Taggart, who was formerly auditor and a member of the board of review of Marion county, Indiana, residing in Indianapolis in said county; Hiram Miller, who was formerly a member of the board of review of Marion county, Indiana, residing at Flackville in said county; Albert Sahm, who was formerly a member of the board of review of Marion county, Indiana, residing at Indianapolis in said county; Sylvester Johnson, who was formerly a member of the board of review of Marion county, Indiana, residing at Irvington in said county; William A. Bell, who was formerly a member of the board of review of Marion county, Indiana, residing in Indianapolis in said county; Charles H. Stuckmeyer, who was formerly a member of the board of review of Marion county, Indiana, residing in Indianapolis in said county; George Wolf, who was formerly assessor of Center township, in Marion county, Indiana, residing in Indianapolis in said county; James A. Mount, a member of the State board of tax commissioners of the State of Indiana, residing in Indianapolis in said State, individually and as such officer; Union B. Hunt, a member of the State board of tax commissioners of the State of Indiana, residing in Indianapolis in said State, individually and as such officer; William H. Hart, a member of the State board of tax commissioners of the State of Indiana, residing in Indianapolis in said State, individually and as such officer; John C. Wingate, a member of the State board of tax commissioners of the State of Indiana, residing in Wingate in said State, individually and as such officer; Thomas B. Buskirk, a member of the State board of tax commissioners of the State of Indiana, residing in Paoli, in said State, individually and as such officer; William D. Owen, formerly a member of the State board of tax commissioners of the State of Indiana, residing at Indianapolis in said State; Americus C. Daily, formerly a member of the State board of tax commissioners of the State of Indiana, residing in Lebanon in said State, and Ivan N. Walker, formerly a member of the State board of tax commissioners of the State of Indiana, residing in Indianapolis in said State; and all of whom are citizens of the State of Indiana and of the United States.

And thereupon your orator complains and says that it is a private corporation organized and existing under the laws of the State of

Indiana in such cases made and provided governing the incorporation of manufacturing and mining companies in said State; that it was organized on or about February 11, 1891, with a nominal capital stock of the sum of $200,000, for the purpose of manufacturing, introducing, selling, and using a certain invention known as a "pneumatic straw-stacker," the machine or apparatus of which is manufactured, sold or used under letters patent of the United States, granted upon said invention under the authority of the Constitution and laws of the United States; that at the time of the incorporation of your orator certain interests in said letters patent were assigned to it for and in consideration of the whole amount of its capital stock, and that such interests in said letters patent became and were its entire capital stock, no portion of which was ever paid in in money or other property; that thereafter, to wit, on or about March 3,

4 1893, your orator's capital stock was increased, under and by virtue of the provisions of the statutes of the State of Indiana in such cases made and provided, from the sum of $200,000 to the sum of $360,000, and that thereupon certain other interests in letters patent of the United States were assigned to it for and in consideration of the whole of such increased amount of its capital stock, and that such interests in said letters patent became and were the whole amount of such increased capital stock, no portion of which was ever paid in in money or other property; that your orator has not now and never has had any other or different capital stock than that herein described; so that the entire value of the capital stock of your orator consists and always has consisted wholly of letters patent of the United States, and neither includes nor represents any other matter or thing of value whatsoever.

Your orator further shows unto your honors that the State of Indiana has enacted and is attempting to enforce certain statutes requiring the taxation of "patent rights" or letters patent of the United States, the provisions of said statutes in question being comprised in the act of the General Assembly of the State of Indiana, approved March 6, 1891, which by section 50 requires that

"Every person required by this act to make or deliver such statement or schedule shall set forth an account of property held or owned by him, as follows:

* * * * * * *

"Seventh. All patent rights describing them, and giving the number of each patent, and the value of each."

and which in section 53 has prescribed and enacted a form of "schedule" which all property-owners are required to follow in returning their property for taxation, in and by which said schedule the "number of patent rights and value" are required to be returned for taxation in common with other personal property. And your orator says that the said statutes of the State of Indiana requiring the taxation of "patent rights" or letters patent so as aforesaid are in contravention of the Constitution and laws of the United States, and are unconstitutional, invalid, and void.

5 Your orator further shows unto your honors that at the time for assessing taxes for the year 1893 it had and was possessed of taxable property and assets to the amount of $8,900, and no more, and that it made due return of the same for taxation, upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said tax statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list, in accordance with the above-described unconstitutional, invalid and void enactment of the State of Indiana, provided for and required the return for taxation of the letters patent of the United States owned by your orator, which said assessment-list was required to be filled out by the said assessor, and which said assessment-list was made to show and does show that your orator was at that time possessed of four letters patent of the United States of the value of $25,000; but your orator denies that by the making of the return as aforesaid it admitted or agreed to the legality of assessing letters patent for taxation, or the validity or propriety of such assessment; and it now avers that it denies and always has denied the validity or legality of such or any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joel A. Baker, Thomas Taggart and Victor M. Backus, did inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1893, because of your orator's ownership of said letters patent as aforesaid, and because of the value of the stock of your orator solely consisting in and derived from such ownership of said letters patent as aforesaid, and in supposed
6 compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $36,000, or $27,100 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States, under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the year 1893 the sum of $204.55 to one Sterling R. Holt who at the date of such payment was the treasurer of Marion county, Indiana, and received an official receipt therefor from the said Sterling R. Holt; which said sum of $204.55 is in full of all taxes with penalties, interest and costs thereon which were justly and lawfully chargeable to your orator for the said year 1893, and is in full of all taxes levied or assessed upon all and singular its

property and assets of every description saving and excepting only the letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne as treasurer as aforesaid, are, in compliance with the supposed duty devolving on them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $389.85 as unpaid taxes for the said year 1893, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the said letters patent as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes so wrongfully, unlawfully, and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

7 And your orator further shows unto your honors that at the time for assessing taxes for the year 1894 it had and was possessed of taxable property and assets to the amount of $7,645, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessors in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list, in accordance with the above-described unconstitutional, invalid and void enactment of the State of Indiana, provided for and required the return for taxation of the letters patent of the United States owned by your orator, which said assessment-list was required to be filled out by the said assessor, and which said assessment-list was made to show and does show that your orator was at that time possessed of four letters patent of the United States of the value of $25,000; but your orator denies that by the making of the return as aforesaid it admitted or agreed to the legality of assessing letters patent for taxation or the validity or propriety of such assessment; and it now avers that it denies and always has denied the validity or legality of such or any assessment for taxation on account of, or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants, Joel A. Baker, Thomas Taggart, Sterling R. Holt, William A. Bell, and Charles H. Stuckmeyer, did inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1894, because of your orator's ownership of said letters patent, as

aforesaid, and because of the value of the stock of your orator
8 solely consisting in and derived from such ownership of said letters patent as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid, and void statute of the State of Indiana, at the sum of $36,000, or $28,355 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the year 1894 the sum of $182.60 to the defendant Sterling R. Holt, who at the date of such payment was the treasurer of Marion county, Indiana, and received an official receipt therefor from the said Sterling R. Holt; which said sum of $182.60 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year 1894, and is in full of all taxes levied and assessed upon all and singular its property and assets of every description saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid, and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, $481.40, as unpaid taxes for the said year 1894, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully, and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

9 And your orator further shows unto your honors that at the time for assessing taxes for the year 1895 it had and was possessed of taxable property and assets to the amount of $10,137, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessors in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the tax assessor demanded of your orator that the number and value of the letters patent owned by your orator should be furnished to be placed upon said assessment-list, which said demand your orator refused to submit to, but instead entered and placed

upon said assessment-list as an answer to the question "Number of patent rights and value," the statement, "We are advised that patent rights are not taxable, and therefore decline to state any value for them;" and that thereafter the said assessor, endeavoring to comply with and carry out the above-described unconstitutional, invalid and void enactment of the State of Indiana, made and attached to said assessment-list a statement saying "Number 30. Returned by deputy assessor in 1894. No. patent rights and value, 4, $25,000. John W. McDonald"—the said John W. McDonald being at that time the chief deputy of the defendant George Wolf, then the tax assessor of Center township, in Marion county, Indiana, as aforesaid. That in the said statement for taxation for the said year 1895 in response to the inquiry "Amount of capital stock authorized" answered "$360,000.00;" and in response to the inquiry "Market value of the shares of stock" answered "Don't know;" and in response to the inquiry "If no market value, then the actual value" answered "The entire capital stock was issued in exchange for certain patent rights or letters patent and has no value except such as it derives from such patent rights. The tangible property of the corporation is not sufficient to meet its indebtedness;" and in response to the inquiry "Personal property within the State" answered "$10,137.00." In and by said statement for taxation also it showed that its indebtedness was $39,863 more than its tangible or taxable property. And your orator avers that it then denied the validity or legality of such or any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joel A. Baker, Thomas Taggart, Sterling R. Holt, William A. Bell, and Charles H. Stuckmeyer, did inequitably, wrongfully, unjustly unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1895 because of your orator's ownership of said letters patent, as aforesaid, and because of the value of the stock of your orator solely consisting in and derived from such ownership of said letters patent as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $36,000, or $25,863 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the year 1895 the sum of $167.33 to the defendant, Sterling R. Holt, who at the date of such payment was the treasurer of Marion county, Indiana, and received an official receipt therefor

from the said Sterling R. Holt, which said sum of $167.23 is in full of all taxes which are justly and lawfully chargeable to your orator for the said year 1895, and is in full of all taxes levied and assessed upon all and singular its property and assets of every description saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $495.04 as unpaid taxes for the said year 1895, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent of the United States as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

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And your orator further shows unto your honors that at the time of assessing taxes for the year 1896 it had and was possessed of taxable property and assets to the amount of $6,972, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list in and by item No. "30," in conformity with the above-described unconstitutional, invalid and void statute of the State of Indiana, required the "number of patent rights and value" owned by your orator to be returned for taxation, but your orator declined to so return the same, and entered as the answer to said item the words "Not taxable." That in the said statement for taxation in response to the inquiry "Amount of capital stock paid up" your orator answered "By the purchase of patent rights, $360,000;" and in response to the inquiry "Market value of the shares of stock" answered "Know of none on the market;" and in response to the inquiry "If no market value then the actual value" answered "The actual value is problematical, and depends wholly upon the value of letters patent owned by the company and for the purchase of which its entire capital stock was issued;" and in response to the inquiry "Personal property within the State" answered "$6,972.00;" and in response to the inquiry "The name and value of each franchise or privilege owned or enjoyed by such corporation" answered "This company has no taxable property whatsoever beyond the $6,972 above stated. Its sole other possessions consist of letters pat-

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ent of the United States, which are not taxable." And your orator avers that it then denied, and now denies, and has always denied the validity or legality of any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joel A. Baker, Harry B. Smith, William H. Schmidt, William A. Bell and Hiram Miller, did inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1896, because of your orator's ownership of said letters patent as aforesaid, and because of the value of the stock of your orator solely consisting in and derived from such ownership of said letters patent as aforesaid, in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $180,000, or $173,026 more than your orator was possessed of in taxable property or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and
13 by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the year 1896 the sum of $115.04 to the defendant William H. Schmidt, who at the date of such payment was the treasurer of Marion county, Indiana, and received an official receipt therefor from the said William H. Schmidt, which sum of $115.04 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year 1896, and is in full of all taxes levied and assessed upon all and singular its property and assets of every description saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $3,556.96 as unpaid taxes for the said year 1896, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent of the United States as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

14 And your orator further shows unto your honors that at the time of assessing taxes for the year 1897 it had and was possessed of taxable property and assets to the amount of $6,544, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list in and by item No. "33," in conformity with the above-described unconstitutional, invalid and void statute of the State of Indiana, required the "number of patent rights and value" owned by your orator to be returned for taxation, but your orator declined to so return the same, and entered as the answer to said item the words "Not taxable." That in the said statement for taxation in response to the inquiry "Amount of capital stock paid up" your orator answered "By the purchase of patent rights, $360,000;" and in response to the inquiry "Market value of the shares of stock" answered "Know of none on the market;" and in response to the inquiry "If no market value then the actual value" answered "The actual value is problematical, and depends wholly upon the value of letters patent owned by the company and for the purchase of which its entire capital stock was issued;" and in response to the inquiry "Personal property within the State" answered "$6,544.00;" and in response to the inquiry "The name and value of each franchise or privilege owned or enjoyed by such corporation" answered "This company has no taxable property whatsoever beyond the $6,544 above stated. Its sole other possessions consist of letters patent of the United States, which are not taxable." And your orator avers that it then denied, and now denies, and has always denied the validity or legality of any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

15 Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joseph E. Boswell, Harry B. Smith, William H. Schmidt, William A. Bell, and Sylvester Johnson, accepted your orator's return as correct, and fixed the assessment of your orator's property for purposes of taxation for the said year 1897 at the sum of $6,435.

And your orator further shows unto your honors that one Merrill Moores, who described himself as a citizen of Marion county, Indiana, took an appeal from the said assessment to the State board of tax commissioners of the State of Indiana, then composed of the defendants James A. Mount, William D. Owen, Americus C. Daily, Ivan N. Walker, and Thomas B. Buskirk, who upon such appeal did inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1897 because of your orator's ownership of said letters patent as aforesaid, and because of the

value of the stock of your orator solely consisting in and derived from such ownership of said letters patent, as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $500,000, or $493,436 more than your orator was possessed of in taxable property or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of the rights of your orator in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the said year 1897 the sum of $111.33 to the defendant William H. Schmidt, who at the date of such payment was treasurer of Marion county, Indiana, and received an official receipt therefor from the said William H. Schmidt, which said sum of $111.33 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year 1897, and is in full of all taxes
16 levied and assessed upon all and singular its property and assets of every description for the said year 1897 saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $8,538.67 as unpaid taxes for the said year 1897, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent of the United States as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

And your orator further shows unto your honors that at the time of assessing taxes for the year 1898 it had and was possessed of taxable property and assets to the amount of $15,962.53 and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list in and by item No. "29" required "every franchise and description and value" owned by your orator to be returned for taxation, and your orator entered as its answer to said item
17 the words "We have several letters patent of the United States, which however are not taxable," thus showing clearly

the nature of its said property. That in the said statement for taxation in response to the inquiry "Amount of capital stock paid up" your orator returned the answer "By the purchase of patent rights, $360,000;" and in response to the inquiry "Market value of the shares of stock" answered "Know of none on the market;" and in response to the inquiry "If no market value then the actual value" answered "The actual value is problematical, and depends wholly upon the value of letters patent owned by the company and for the purchase of which its entire capital stock was issued;" and in response to the inquiry "Personal property within the State" answered "$15,962.53;" and in response to the inquiry "The name and value of each franchise or privilege owned or enjoyed by such corporation" answered "This company has no taxable property whatsoever beyond the $15,962.53 above stated. Its sole other possessions consist of letters patent of the United States, which are not taxable." And your orator avers that it then denied, and now denies, and has always denied the validity or legality of any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joseph E. Boswell, Harry B. Smith, William H. Schmidt, Albert Sahm, and William Pollard, accepted your orator's return as correct, and fixed the assessment of your orator's property for purposes of taxation for the said year 1898 at the said sum of $15,962.53.

And your orator further shows unto your honors that one Merrill Moores, who described himself as a citizen of Marion county, Indiana, took an appeal from the said assessment to the State board of tax commissioners of the State of Indiana, then composed of the defendants James A. Mount, William D. Owen, Americus C. Daily, Ivan N. Walker, and Thomas B. Buskirk, who upon such ap-

18 peal did inequitably, wrongfully, unjustly, unlawfully, and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1898, because of your orator's ownership of said letters patent as aforesaid, and because of the value of the stock of your orator, solely consisting in and derived from such ownership of said letters patent as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $500,000, or $484,037.47 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of the rights of your orator in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the said year 1898 the sum of $295.35 to one William H.

Schmidt, who at the date of such payment was treasurer of Marion county, Indiana, and received an official receipt therefor from the said William H. Schmidt, which said sum of $295.35 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year 1898, and is in full of all taxes levied and assessed upon all and singular its property and assets of every description saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $8,954.65 as unpaid taxes for the said year 1898, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent of the
19 United States as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

NOTE.—An amendment was made to this bill January 21, 1901, to be inserted at this point. See pp. 28–30 *post* for said amendment

Your orator further shows unto your honors that the returns for taxation made by it in the said several years 1893, 1894, 1895, 1896, 1897 and 1898, and each and every of them, contained full and complete statements of your orator's property, and that all such property and assets without exception or reservation were fully and completely returned at their full cash value, except in so far as your orator declined to return its letters patent for taxation. That in so far as your orator's capital stock had or has any value whatever, it was and is solely and exclusively derived from its letters patent as aforesaid and not otherwise. That your orator has not now and never has had any property or assets of any description saving and excepting only the said letters patent which could lend or impart any value to its capital stock. That your orator's indebtedness is now and always has been an amount largely in excess of the value of all its property and assets of every description saving and excepting only its letters patent. That except for its ownership of said letters patent your orator would now be and would always have been insolvent, and its capital stock worthless. That no money or property, of any character or description, was ever paid in to your orator, as, for, or on account of its capital stock, saving and excepting only its said letters patent. And your orator further charges and avers that these facts are now and always have been well known to the defendants, who, nevertheless, having heard that your

orator was in receipt of a large income from its said patents, and that its stock was for that reason regarded as of large value by the owners thereof, without right or authority, and in usurpation of powers whereof they were not possessed, have exercised or pre-
20 tended to exercise the sheerly capricious right to tax the letters patent owned by your orator under the guise and pretext of taxing your orator's capital stock, which, as defendants at the time well knew had no value whatever except as it represented, was derived from or consisted in your orator's said patents. And your orator avers that the assessment for taxation so as aforesaid made in each of said years was, except as to the value returned by your orator in each of said years other than said letters patent, based solely and exclusively upon the value as estimated by said county board of review and said State board of tax commissioners of said letters patent and of said capital stock as derived from said letters patent, and not upon any other or different value or property. All to the great and manifest wrong, damage and injury of your orator, and in defiance of your orator's rights in the premises, and in violation of the Constitution and laws of the United States.

Your orator further shows unto your honors that all taxes justly and legally due from your orator prior to those assessed in and for the year 1899 have been fully paid, as hereinbefore set forth, and that the taxes for the year 1899 are not yet due.

Your orator further shows unto your honors that at the times of paying the said taxes as aforesaid for the years 1893, 1894, 1895, 1896, 1897, and 1898, your orator did solemnly and formally protest against the unjust, inequitable, unlawful and wrongful assessment herein elsewhere complained of, and did make such payment as and for the full amount of all taxes lawfully, justly or properly chargeable or assessable to your orator.

Your orator further shows unto your honors that the originals of the above-described assessment-lists and statements for taxation, together with the tax duplicates upon which the assessments complained of are entered, are on file in the offices of the defendants herein, in the court-house of Marion county in the city of Indian-
apolis, in the State of Indiana, within the jurisdiction of this
21 court, and in the official custody of such of the defendants herein as usually have custody thereof in their respective capacities as public officers as above set forth.

And your orator further shows unto your honors that the defendant Armin C. Koehne is the treasurer of Marion county, Indiana, whose duty it is as such treasurer, under the laws of the State of Indiana, to receive and collect taxes for the said State of Indiana, and also for Marion county in said State, and also for the city of Indianapolis within said county, and also for the school board of the city of Indianapolis, Indiana. That a large proportion of the amounts received and collected by the said defendant as treasurer, as aforesaid, are for and on account of and for the benefit of the State of Indiana, a sovereign State, and one of the United States, and that under the Constitution and laws no suit can be maintained against the State of Indiana. That it is a part of the duty of the

said defendant Armin C. Koehne, as aforesaid, to pay over into the treasury of the State of Indiana a large proportion of the amounts so received and collected by him as taxes, and, therefore, that if said amounts are so collected and received and paid over, they will become mixed with the moneys of the said State, and thus be beyond reach of any process of this or any court, and irrecoverable, and that great and irreparable injury will result to your orator if such unlawful collection and paying over as aforesaid be not prevented. Further that were it possible to recover such moneys after payment a multiplicity of suits would be necessary.

And your orator further shows unto your honors that taxes amounting as aforesaid to a much larger amount than the amounts so paid for the years 1893, 1894, 1895, 1896, 1897 and 1898, have been pretended to be assessed against your orator upon the assessment and valuation of its property and assets, by reason of the inclusion therein of its letters patent of the United States as aforesaid, and so inequitably, wrongfully, unjustly, unlawfully and injuriously placed upon the property and assets of your orator, and that
22 said pretended taxes have been extended upon the tax duplicates of Marion county, Indiana, as aforesaid, and that such tax duplicates are now in the hands of the said defendant Armin C. Koehne as such treasurer, and that the said defendants, and particularly the said defendant Armin C. Koehne, are claiming and asserting that the said several sums so extended on the said duplicates are delinquent taxes against your orator and its property under the provisions of the statutes of the State of Indiana under which they pretend to be acting, and that said defendants in their official capacities are threatening and intend to and will in supposed compliance with the requirements of the provisions of the aforesaid unconstitutional, invalid, and void statutes of the State of Indiana requiring such taxation levy upon the property of your orator, and will proceed to sell and distrain the same to pay and satisfy said sums so claimed to be due and delinquent, if not enjoined from so doing; and that said defendants are threatening to collect such wrongful, unjust, illegal, and void taxes by distraint and sale of the property of your orator, to the great and irreparable injury of your orator.

Your orator further shows unto your honors that notwithstanding the payments aforesaid of all the taxes justly and equitably due from your orator for the years 1893, 1894, 1895, 1896, 1897, and 1898, as hereinbefore set forth, the said defendants, and particularly the defendant Armin C. Koehne, as treasurer of Marion county, Indiana, as aforesaid, is claiming and asserting the right to enforce the payments of the entire taxes as extended upon his duplicates upon the said wrongful, unjust, unlawful, and void assessment and valuation of the property of your orator, including its said letters patent as aforesaid, made by said board of review, and by said State board of tax commissioners, and will, unless restrained and enjoined by a decree of this court, attempt to enforce payment of said wrongful, unjust and unlawful taxes by distraint and sale of the property of your orator, to its great and irreparable wrong and injury.

23 Your orator further shows unto your honors that said wrongful, unjust, inequitable, unlawful and void taxation, extended and entered upon said tax duplicates because of the aforesaid unjust, inequitable, unlawful and void assessment and valuation made by the said board of review, and said State board of tax commissioners, constitutes and is a cloud upon the title to the property of your orator, which a court of equity has full power and jurisdiction to remove by its decree.

Your orator further shows unto your honors that this is a suit arising under the Constitution and laws of the United States, and that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars—the total sum involved being upwards of twenty thousand dollars, as above set forth.

And forasmuch as your orator has no adequate relief except in this court, to the end that the defendants may if they can show reason why your orator should not have the relief hereby prayed, and may, but without oath, which is hereby expressly waived, full, true, direct and perfect answer make to the matters herein stated and charged, and that defendants may answer the premises, and that they may be decreed and compelled to account for and pay over the damages which your orator has sustained or shall have sustained by reason thereof, and be restrained from any further violation of your orator's rights, your orator prays this honorable court to grant a writ of injunction perpetually enjoining and restraining said defendants, individually and as such officers, and each and every of them, and all their deputies, clerks, attorneys, agents and servants, and all persons acting by, through or under the authority of either of them, and their successors in office forever, from in anywise assessing or collecting, or in any manner attempting to assess or collect the said or any amounts claimed as taxes as aforesaid, or any or any part of said amounts, and entered or to be entered upon the tax duplicates in the custody of said defendants or any or either of them, or any other amounts which are or may be

24 claimed to be due as taxes directly or indirectly on account of the value of the said or any patents owned by your orator, or on account of the value of your orator's stock issued for, consisting of or representing such patents, or from entering or causing to be entered any such taxes upon any tax duplicates or other books or accounts for keeping an account of taxes, and your orator prays that a provisional or preliminary injunction be issued restraining the said defendants from levying upon, distraining, seizing, selling or in anywise interfering with the property of your orator pending this cause.

By reason of the facts and averments hereinbefore set forth your orator further prays that upon final hearing hereof it be adjudged and decreed that the said assessment and valuation for taxation of the letters patent of your orator made directly or indirectly by said defendants or either or any of them is wrongful, inequitable, unjust, unlawful and wholly void; also that the cloud placed upon the title of your orator's corporate property by reason of said wrongful, inequitable, unjust, unlawful and void assessment and valuation made by said defendants or either or any of them be removed; also that

all entries heretofore made on the tax duplicates or tax records in custody of the defendants or any or either of them concerning such unlawful taxation be canceled and expunged; also that the defendants by decree of this court may be compelled to account for and pay over to your orator the damages your orator has sustained or shall have sustained by reason of the aforesaid unlawful acts of the defendants; also, that your honors may proceed to assess, or cause to be assessed under your direction such damages; and also that the defendants be decreed to pay the costs of this suit, and that your orator may have such other and further relief as the equity of the case or the Constitution and laws of the United States may require and to this court may seem meet.

25 May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendants Armin C. Koehne, Joseph E. Boswell, Harry B. Smith, Thomas Madden, William Pollard, Eugene Sauley, William H. Schmidt, Sterling R. Holt, Victor M. Backus, Joel A. Baker, Thomas Taggart, Hiram Miller, Albert Sahm, Sylvester Johnson, William A. Bell, Charles H. Stuckmeyer, George Wolf, James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, Thomas B. Buskirk, William D. Owen, Americus C. Daily, and Ivan N. Walker, commanding them on a day certain therein to be named, and under a certain penalty to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand and abide such further order, direction and decree as may be made against them.

And your orator will ever pray.

THE INDIANA MANUFACTURING COMPANY,
By ARTHUR A. McKAIN, *President.*

Attest: JOSEPH K. SHARPE, JR., *Secretary.*

CHESTER BRADFORD,
Solicitor and of Counsel for Complainant.
—— ——, *Of Counsel.*

26 STATE OF INDIANA, } ss:
County of Marion, }

Arthur A. McKain, being duly sworn, deposes and says, that he is the president of the corporation The Indiana Manufacturing Company, the complainant herein. That he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are shown to be on information and belief, and as to those matters he verily believes them to be true.

ARTHUR A. McKAIN.

Subscribed and sworn to before me, a notary public within and for said county and State, this 28th day of June, 1900.

JAMES A. WALSH,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 17th day of July, 1900, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

27 This cause coming on to be further heard on the motion of complainant for an injunction against the defendants and each of them, *pendente lite*, and being argued by counsel and submitted for the consideration of the court, it is hereby ordered, adjudged and decreed by the court that the temporary restraining order heretofore granted be and the same is hereby dissolved as to each and all of the defendants save and except the defendant Armin C. Koehne, treasurer of Marion county, and that as to said defendant Koehne, treasurer as aforesaid, said restraining order be and the same is hereby continued in force, and he, and his deputies, clerks, attorneys, agents and servants and all persons acting by, through or under his authority be and they are hereby restrained and enjoined from assessing, levying upon, distraining, seizing, selling or in anywise interfering with the property of the complainant until the final determination of this cause or the further order of the court.

And afterwards, to wit, at the November term of said court, on the 21st day of January, 1901, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant by Chester Bradford, Esq., its solicitor, and files its amendment to the bill herein, in the words following to wit:

28 In the United States Circuit Court for the District of Indiana.

THE INDIANA MANUFACTURING COMPANY
vs.
ARMIN C. KOEHNE ET AL. } No. 9895. In Equity.

Amendment to Bill of Complaint.

The complainant herein, by leave of court first had and obtained, hereby withdraws the amendment to its bill of complaint heretofore filed herein, July 13, 1900, and as a substitute for the said amendment, and by way of supplement and addition to its said bill of complaint, hereby amends the same by inserting therein between the seventh and eighth lines on page 19 thereof the following:

And your orator further shows unto your honors that at the time of assessing taxes for the year 1900 it had and was possessed of tax-

able property and assets to the amount of $3,503, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list in and by item No. "30," in conformity with the above-described unconstitutional, invalid and void statute of the State of Indiana, required the "number of patent rights and value" owned by your orator returned for taxation, but your orator declined to so return the same, and entered as the answer to said item the words "Our patent rights in our estimation are very valuable but are not taxable." That in the said statement for taxation in response to the inquiry "Amount of capital stock paid up" your orator answered "By the purchase of patent rights, $360,000;" and in response to the
29 inquiry "Market value of the shares of stock" answered "Know of none on the market;" and in response to the inquiry "If no market value then the actual value" answered "The actual value is problematical, and depends wholly upon the value of letters patent owned by the company and for the purchase of which its entire capital stock was issued;" and in response to the inquiry "Personal property within the State" answered "$3,503.00;" and in response to the inquiry "The name and value of each franchise or privilege owned or enjoyed by such corporation" answered "This company has no taxable property whatever beyond the $3,503 above stated. Its sole other possessions consists of letters patent of the United States, which are not taxable." And your orator avers that it then denied, and now denies, and has always denied the validity or legality of any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

And your orator further shows unto your honors that the defendants Armin C. Koehne, Joseph E. Boswell, Harry B. Smith, Thomas Madden and William Pollard, constitute the board of review of Marion county, Indiana, for the year 1900, and are the persons who are charged with the levying of taxes in said Marion county, Indiana. That there has been returned to the said defendants or some of them, to be placed upon the tax duplicates of Marion county, Indiana, the sum of $3,503, as aforesaid, which said sum your orator avers is the correct amount for which it should be assessed for taxation.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, composed of the defendants Armin C. Koehne, Joseph E. Boswell, Harry B. Smith, Thomas Madden and William Pollard, did not disturb the amount returned by your orator, but without action thereon returned your orator's tax statement and assessment-list showing the value of its taxable

property to be the sum of $3,503, as aforesaid, to the tax assessor.

30 And your orator further shows unto your honors that one Allen Jennings, who described himself as a citizen of Marion county, Indiana, took an appeal in respect to the taxation of your orator for the year 1900 to the State board of tax commissioners of the State of Indiana, composed of the defendants James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, and Thomas B. Buskirk, who, upon such appeal, did, on or about August 13, 1900, and since the filing of the original bill of complaint herein, inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1900 because of your orator's ownership of said letters patent, and because of the value of the stock of your orator solely consisting in and derived from such ownership of such letters patent as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $360,000, or $356,497 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator therefore prays that the above and foregoing may be incorporated in its said bill of complaint by way of amendment and supplement thereto, the transaction complained of having occurred since the filing of its original bill of complaint herein, and that your orator may have the same relief in respect to the said transaction as prayed for in respect to the corresponding transactions recited and complained of in its said original bill of complaint.

And your orator will ever pray.

THE INDIANA MANUFACTURING COMPANY,
By ARTHUR A. McKAIN, *Pres't.*

CHESTER BRADFORD, *Of Counsel.*

31 STATE OF INDIANA, *County of Marion,* } ss:

Arthur A. McKain, being duly sworn, deposes and says, that he is the president of the corporation The Indiana Manufacturing Company, the complainant herein. That he has read the foregoing amendment to bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are shown to be on information and belief, and as to those matters he verily believes them to be true.

ARTHUR A. McKAIN.

Subscribed and sworn to before me, a notary public within and for said county and State, this 15th day of January, 1901.

[SEAL.] JAMES A. WALSH,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 13th day of June, 1901, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants Armin C. Koehne and Joseph E. Boswell by counsel, and by leave of court withdraw their demurrers heretofore filed herein, and each files his demurrer to the bill and amendment thereto, in the words following, to wit:

32 In the United States Circuit Court, District of Indiana.

INDIANA MANUFACTURING COMPANY, Complainant, v. ARMIN C. KOEHNE ET AL. } No. 9895. In Equity.

Demurrer of Armin C. Koehne, as Treasurer of Marion County, Indiana, to the Bill and Amendment of Complaint.

The defendant Armin C. Koehne, as treasurer of Marion county, Indiana, by protestation, not confessing or acknowledging any or all of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, demurs to the said bill and for cause of demurrer says:

(1.) That it appears upon the face of the bill that the complainant has an adequate remedy at law.

(2.) That the said complainant has not in or by *his* said bill or amendment made or stated such a cause as doth or ought to entitle it to any relief as is thereby sought or prayed for from or against this defendant.

(3.) That the value of the subject-matter of the plaintiff's action for the years 1893, 1894, and 1895, each separately, is beneath the dignity of this court, in that it does not show by the said bill or amendment that the matter in dispute for either of said years exceeds, exclusive of interest and costs, the sum of $2,000.

(4.) Because neither the said bill nor amendment shows on its face any diverse citizenship between the parties complainant and defendant.

(5.) Because neither the bill nor the supplemental bill shows on its face that the action is one arising under the Constitution or laws of the United States.

(6.) That it appears from said bill and amendment that this court has no jurisdiction to hear and determine this action.

(7.) That said bill of complaint and amendment is wholly without equity.

33 Wherefore and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto and

humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said bill and amendment, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WM. L. TAYLOR,
MARTIN M. HUGG,
Solicitor- for Defendant.

DISTRICT OF INDIANA, }
County of Marion. }

Armin C. Koehne makes oath and says that he is the defendant in the above-entitled cause, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

ARMIN C. KOEHNE,
Treasure- Marion Co.

STATE OF INDIANA, }
Marion County. }

Subscribed and sworn to before me this 11th day of June, 1901.

FROST E. KING,
[SEAL.] *Notary Public.*

My commission expires Sep. 2–1902.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. L. TAYLOR,
Solicitor for Defendants.

34 In the United States Circuit Court, District of Indiana.

INDIANA MANUFACTURING COMPANY, Complainant, } No. 9895. In
v. } Equity.
ARMIN C. KOEHNE ET AL. }

Demurrer of Joseph E. Boswell and Others to the Bill and Amendment of Complaint.

The defendants, Joseph E. Boswell, Harry B. Smith, Thomas Madden, William Pollard, Eugene Sauley, William H. Schmidt, Sterling R. Holt, Victor M. Backus, Joel A. Baker, Thomas Taggart, Hiram Miller, Albert Sahm, Sylvester Johnson, William A. Ball, Charles H. Stuckmeyer, George Wolf, James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, Thomas B. Buskirk, William D. Owen, Americus C. Daily and Ivan N. Walker, by protestation, not confessing or acknowledging any or all of the matter and things in said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, demur to the said bill and for causes of demurrer say

(1.) That it appears upon the face of the bill that the complainant has an adequate remedy at law.

(2.) That the said complainant has not in or by *his* said bill of

amendment made or stated such a cause as doth or ought to entitle it to any relief as is thereby sought or prayed for from or against this defendant.

(3.) That the value of the subject-matter of the plaintiff's action for the years 1893, 1894 and 1895, each separately, is beneath the dignity of this court, in that it does not show by the said bill or amendment that the matter in dispute for either of said years exceeds, exclusive of interest and costs, the sum of $2,000.00.

(4.) Because neither the said bill nor amendment shows on its face any diverse citizenship between the parties complainant and defendant.

35 (5.) Because neither the bill nor the supplemental bill shows on its face that the action is one arising under the Constitution or laws of the United States.

(6.) That it appears from said bill and amendment that this court has no jurisdiction to hear and determine this action.

(7.) That said bill of complaint and amendment is wholly without equity.

Wherefore and for divers other good cause of demurrer appearing in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said bill and amendment, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WM. L. TAYLOR,
MARTIN M. HUGG,
Solicitors for Defendants.

DISTRICT OF INDIANA, }
County of Marion. }

Harry B. Smith for himself and other named defendants makes oath that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

HARRY B. SMITH.

STATE OF INDIANA, }
Marion County, } ss:

Subscribed and sworn to before me this 11th day of June, 1901.

FROST E. KING,
Notary Public.

[SEAL.]

My commission expires Sep. 2, 1902.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. L. TAYLOR,
Solicitor for Def'ts.

And afterwards, to wit, at the May term of said court, on the 25th day of September, 1901, before Honorable John H. Baker, judge of

said court, the following further proceedings in the above-
36 entitled cause were had, to wit:

This cause came on to be heard September 25, 1901, and was argued by counsel and briefs duly filed; and thereupon the court being sufficiently advised in the premises doth sustain the demurrer to the bill of complaint herein, and it is ordered, adjudged and decreed that the bill of complaint be and the same is hereby dismissed for want of equity at the costs of the complainant.

The court doth further order, adjudge and decree that the temporary restraining order heretofore issued in this cause shall be continued in force for the period of thirty days, and thereafter until the final disposition of the cause on appeal, if, within said period of thirty days the complainant shall duly perfect its appeal and give a good and sufficient appeal bond in the sum of twenty-five thousand dollars ($25,000); otherwise said restraining order shall stand dissolved at the end of said period of thirty days.

And afterwards, to wit, at the May term of said court, on the 11th day of October, 1901, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant by counsel, and files its prayer for appeal and assignment of errors herein in the words following, to wit:

37 In the United States Circuit Court for the District of Indiana.

THE INDIANA MANUFACTURING COMPANY
vs.
ARMIN C. KOEHNE ET AL. } No. 9895. In Equity.

Prayer of Appeal.

The above-named complainant, considering itself aggrieved by the decision and decree dated the 25th day of September, 1901, in the above-entitled cause, does hereby appeal from said decision and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith; and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decision and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

CHESTER BRADFORD,
Solicitor for Complainant.

Indianapolis, Indiana, October 9th, 1901.

The foregoing prayer of appeal is hereby allowed.
October 11, 1901.

JOHN H. BAKER, *Judge.*

38 In the United States Circuit Court for the District of Indiana.

THE INDIANA MANUFACTURING COMPANY
vs.
ARMIN C. KOEHNE ET AL. } No. 9895. In Equity.

Assignment of Errors.

Now comes The Indiana Manufacturing Company, the complainant in the above-entitled cause, and says that the decision and decree in said cause are erroneous and against the just rights of the said complainant; and it hereby assigns, as its reasons for appeal, errors of the court in said decision and decree contained, as follows, to wit:

First. That the court erred in holding that the complainant had an adequate remedy at law.

Second. That the court erred in holding that the complainant had a suitable and adequate remedy under the laws of the State of Indiana.

Third. That the court erred in holding that the bill of complaint herein is without equity.

Fourth. That the court erred in sustaining the demurrers of the defendants.

Fifth. That the court erred in not overruling the demurrers of the defendants.

Sixth. That the court erred generally in its decision and decree in this case, and particularly in this, in dismissing complainant's bill of complaint.

Wherefore, appellant prays that the said decision and decree be reversed, and the case remanded, with directions to the court below to overrule the demurrers of the defendants, and to enter a decree in favor of the complainant, and awarding relief in accordance with the prayer of its said bill of complaint.

CHESTER BRADFORD,
Solicitor and of Counsel for Complainant.

Indianapolis, Indiana, October 9th, 1901.

39 And said prayer for appeal is by the court now allowed, and thereupon the complainant files its appeal bond herein in the sum of $25.000.00, with Arthur A. McKain and Joseph K. Sharpe, Jr., as sureties thereon, which bond is now by the court approved, and is in the words following, to wit:

40 United States Supreme Court.

THE INDIANA MANUFACTURING COMPANY (a Corporation), Complainant,
vs.
ARMIN C. KOEHNE ET AL., Defendants.
No. 9895.

Know all men by these presents, that we The Indiana Manufacturing Company, a corporation organized under the laws of the State of Indiana, as principal, and Arthur A. McKain, and Joseph K. Sharpe, Jr. as sureties, are held and firmly bound unto the above-named Armin C. Koehne, Joseph E. Boswell, Harry B. Smith, Thomas Madden, William Pollard, Eugene Sauley, William H. Schmidt, Sterling R. Holt, Victor M. Backus, Joel A. Baker, Thomas Taggart, Hiram Miller, Albert Sahm, Sylvester Johnson, William A. Bell, Charles H. Stuckmeyer, George Wolf, James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, Thomas B. Buskirk, William D. Owen, Americus C. Daily and Ivan N. Walker, defendants, in the sum of twenty-five thousand dollars, ($25,000) to be paid to said defendants, to which payment, well and truly to be made, we bind ourselves jointly and severally, and our and each of our heirs, executors and administrators, jointly by the- presents.

Sealed with our seals and dated this 9th day of October 1901.

Whereas, the above-named The Indiana Manufacturing Company hath prosecuted an appeal to the Supreme Court of the United States, to reverse the decision and decree rendered in the above-entitled suit, by the circuit court of the United States for the district of Indiana: Now, therefore, the condition of this obligation is, that if the above-named The Indiana Manufacturing Company shall prosecute its said appeal to effect and answer all costs and damages that may be adjudged or awarded against it if it shall fail to make good its plea, then this obligation to be void; otherwise in full force.

THE INDIANA MANUFACTURING COMPANY,
By JOSEPH K. SHARPE, JR., *Secretary.*
ARTHUR A. McKAIN. [SEAL.]
JOSEPH K. SHARPE, JR. [SEAL.]

Sealed and delivered in presence of—
CHESTER BRADFORD.
LEWIS H. COLVIN.

Taken and approved by me this 11th day of October, 1901.
JOHN H. BAKER, *Judge.*

41 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United — for the district of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record in the

above-entitled cause as fully as the same appears of record and remains on file in my office.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said court, at Indianapolis in said district this 16th day of October, 1901.

NOBLE C. BUTLER, *Clerk.*

The issuance and service of a citation herein is hereby waived.

WILLIAM L. TAYLOR,
Attorney General of Indiana, Solicitor for Appellees.

Endorsed on cover: File No. 18,293. Indiana C. C. U. S. Term No. 440. The Indiana Manufacturing Company, appellant, *vs.* Armin C. Koehne, Joseph E. Boswell, Harry B. Smith *et al.* Filed October 21st, 1901.